

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
CLAUDE REESE,

Plaintiff,

-against-

**PROPOSED JOINT  
PRE-TRIAL ORDER**

ROBERT WILLIAMSON,  
STEVEN DRAPALA,  
RICHARD BODNAR,  
JUSTIN FRIEDLANDER,  
CLIFFORD DONOVAN,  
DANNY LAWRENCE,  
JOSEPH BURNS,  
ROBERT GARCIA,  
MICHAEL PADGETT,  
GLENROY RILEY and  
ANDREW MILYKO,

22 Civ. 10494 (PMH)

Defendants.  
-----X

The parties hereby submit this Proposed Joint Pre-Trial Order.

**i. The full caption of the action.**

The caption of the action is as above.

**ii. The amount of trial time that each party anticipates needing for their case in chief.**

Plaintiff anticipates needing two days to complete his case in chief. Defendants anticipate needing two days to complete their case in chief.

**iii. The names, addresses (including firm names), email addresses, and office and mobile telephone and fax numbers of trial counsel.**

Trial counsel for Plaintiff:

Glenn Miller  
Sivin, Miller & Roche, LLP  
20 Vesey Street, Suite 1400  
New York, NY 10007  
Office Tel: (212) 349-0300  
Cell phone: (914) 582-1807  
Email: gmiller@sivinandmiller.com  
Fax: (212) 406-9462

Trial counsel for Defendants:

S. Cynthia Luo & Ian Ramage  
Assistant Attorneys General  
Office of the Attorney General  
28 Liberty Street, 18<sup>th</sup> Floor  
New York, NY 10005  
Office Tel: (212) 416-8037/8659  
Email: cynthia.luo@ag.ny.gov  
ian.ramage@ag.ny.gov

**iv. A brief statement by Plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other Party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all authority relied on and relevant facts as to citizenship and jurisdictional amount.**

For Plaintiff: This action arises under 42 U.S.C. § 1983 and alleges violations of Plaintiff's federal civil and constitutional rights; specifically, rights guaranteed under the First and Eighth Amendments to the United States Constitution. Jurisdiction is conferred on this Court by 28 U.S.C. § 1343, which provides for original jurisdiction over all actions brought pursuant to § 1983, and by 28 U.S.C. § 1331, which provides jurisdiction over all cases brought pursuant to the Constitution and laws of the United States.

For Defendants: Defendants do not dispute subject matter jurisdiction.

**v. A brief summary by each party of the claims and defenses that party has asserted that remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. Such statements shall include all claims and defenses previously asserted which are not to be tried.**

For Plaintiff: Plaintiff alleges that on May 1, 2020, while he was incarcerated at Otisville Correctional Facility, he was subjected to a use of excessive force by defendants Robert Williamson, Steven Drapala, Richard Bodnar, Justin Friedlander, Clifford Donovan, Danny Lawrence, Joseph Burns, Robert Garcia, and Michael Padgett, in violation of his Eighth Amendment right not to be subject to cruel and unusual punishment.

Plaintiff further asserts that each of these Defendants, in addition to Defendants Glenroy Riley and Andrew Milyko, deliberately failed to intervene to prevent and/or stop this use of excessive force by their fellow officers, despite having reasonable opportunities to do so.

Plaintiff further asserts that on May 1, 2020, Defendants Robert Williamson and Justin Friedlander issued false misbehavior reports to Plaintiff in retaliation for Plaintiff having exercised his First Amendment right of free speech and his right to petition the government for redress of grievances.

For Defendants: Defendants Williamson and Friedlander deny that the force used against Plaintiff was excessive. Defendants Williamson and Friedlander assert that the level of force used against Plaintiff was reasonable and necessary under the circumstances, and that Plaintiff's injuries were a direct result of Defendants Williamson and Friedlander's reasonable and necessary use of force. Defendants Drapala, Bodnar, Donovan, Lawrence, Burns, Garcia, and Padgett deny that they used any force against Plaintiff. All Defendants deny that they failed to intervene in the use of excessive force. In the alternative, Defendants may be entitled to qualified immunity on Plaintiff's claim. Defendants' entitlement to qualified immunity is an issue of law to be decided by the Court based upon the facts found by the jury. If applicable, Defendants will prepare proposed special interrogatories for the jury, based on the evidence presented at trial, prior to the charge conference. See Cowan v. Breen, 352 F.3d 756, 764-65 n. 8 (2d Cir. 2003).

**vi. A statement by each Party as to whether the case is to be tried with or without a jury, and the number of trial days needed.**

The parties agree this case is to be tried with a jury. The anticipated length of the trial will be four days.

**vii. A statement as to whether all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented).**

The parties have not all consented to trial of the case by a magistrate judge.

**viii. Any stipulations of fact or law that have been agreed to by the parties.**

The parties agree to the following stipulations of fact:

1. On May 1, 2020, Plaintiff was incarcerated at Otisville Correctional Facility.
2. On May 1, 2020, Defendants Robert Williamson, Steven Drapala, Andrew Milyko, Justin Friedlander, Clifford Donovan, Danny Lawrence, Joseph Burns, Robert Garcia, and Michael Padgett were all employed by the New York State Department of Corrections and Community Supervision (DOCCS) as officers at Otisville Correctional Facility.
3. On May 1, 2020, Defendants Glenroy Riley and Richard Bodnar were employed by DOCCS as correction sergeants.
4. On May 1, 2020, Plaintiff was involved in a use-of-force incident at Otisville Correctional Facility.
5. On May 1, 2020, two misbehavior reports were issued to Plaintiff.
6. Plaintiff never made any grievances or complaints about the conditions of his confinement, formal or informal, directly to Defendants Williamson or Friedlander.
7. Defendant Robert Williamson began at Otisville Correctional Facility on 9/30/1993, transferred to Eastern Correctional Facility on 4/14/2014, and then transferred back to Otisville on 2/4/2019.

The parties agree to the following statements of law:

1. Without conceding that Plaintiff has any valid claims pursuant to 42 U.S.C. § 1983, all parties stipulate that, at all times relevant herein, all Defendants were acting under color of state law.

**ix. A list of the witnesses each party expects to call on its case in chief, including a very brief description of the witness's role and/or the subject matter of his or her anticipated testimony, the amount of court time needed for each witness, and a statement as to whether any other party objects to the witness.**

Plaintiff intends to offer testimony from the following witnesses:<sup>1</sup>

<b>Witness</b>	<b>Role/Subject Matter</b>	<b>Est. Court Time</b>	<b>Objection</b>
Claude Reese	Plaintiff / The underlying incident	60 minutes	
Robert Williamson	Defendant / The underlying incident	30 minutes	
Steven Drapala	Defendant / The underlying incident	15 minutes	
Richard Bodnar	Defendant / The underlying incident	30 minutes	
Justin Friedlander	Defendant / The underlying incident	30 minutes	
Clifford Donovan	Defendant / The underlying incident	10 minutes	
Danny Lawrence	Defendant / The underlying incident	5 minutes	
Joseph Burns	Defendant / The underlying incident	15 minutes	
Robert Garcia	Defendant / The underlying incident	15 minutes	
Michael Padgett	Defendant / The underlying incident	15 minutes	
Glenroy Riley	Defendant / The underlying incident	15 minutes	
Andrew Milyko	Defendant / The underlying incident	15 minutes	
Tanisha Harris	OSI Investigator / Investigation into the underlying incident	10 minutes	403: Confusion of issues and prejudice
Gregory Radcliffe (96A7960) (To testify remotely)	Inmate in 118-2 and Witness / The underlying incident	12.5 minutes	
Reuben Febus	OSI Investigators / The statement taken by them of Luis Torres	10 minutes	403: Confusion of issues and needlessly

<sup>1</sup> While Plaintiff has made small adjustments below to the intervals of time he expects each witness to testify, the sum total of time anticipated for all of Plaintiff's witnesses to testify complies with this Court's directions at the May 6, 2024 pre-trial conference. *See* ECF No. 62.

			cumulative testimony
Nurse Page	Treated Plaintiff's Injuries / The underlying incident and treatment to Plaintiff's injuries rendered	10 minutes	
Doctor Gage	Treated Plaintiff's Injuries / The underlying incident and treatment to Plaintiff's injuries rendered	10 minutes	
Asia Reese	Plaintiff's Wife / The underlying incident	10 minutes	401: Relevance; 403: Prejudicial & duplicative 602: Personal knowledge; 801: Hearsay

Defendants intend to offer testimony from the following witnesses:

<b>Witness</b>	<b>Role/Subject Matter</b>	<b>Est. Court Time</b>	<b>Objection</b>
Robert Williamson	Defendant / To testify about his actions and observations on May 1, 2020, as well as his training to be a Correction Officer and his duties and responsibilities	20 minutes	
Steven Drapala	Defendant / To testify about his actions and observations on May 1, 2020, as well as his training to be a Correction Officer and his duties and responsibilities	20 minutes	
Richard Bodnar	Defendant / To testify about his actions and observations on May 1, 2020, as well as his training to be a Correction Officer and his duties and responsibilities	20 minutes	
Justin Friedlander	Defendant / To testify about his actions and observations on May 1, 2020, as well as his training to be a Correction Officer and his duties and responsibilities	20 minutes	
Clifford Donovan	Defendant / To testify about his actions and observations on May 1, 2020, as well as his training to be a Correction Officer and his duties and responsibilities	20 minutes	
Danny Lawrence	Defendant / To testify about his actions and observations on May 1, 2020, as well as his training to be a Correction Officer and his duties and responsibilities	20 minutes	
Joseph Burns	Defendant / To testify about his actions and observations on May 1, 2020, as well as his training to be a Correction Officer and his duties and responsibilities	15 minutes	
Robert Garcia	Defendant / To testify about his actions and observations on May 1, 2020, as well as his training to be a Correction Officer and his duties and responsibilities	15 minutes	
Michael Padgett	Defendant / To testify about his actions and observations on May 1, 2020, as well as his training to be a Correction Officer and his duties and responsibilities	15 minutes	
Glenroy Riley	Defendant / To testify about his actions and observations on May 1, 2020, as well as his training to be a Correction Sergeant and his duties and responsibilities	15 minutes	
Andrew Milyko	Defendant / To testify about his actions and observations on May 1, 2020, as well as his training to be a Correction Officer and his duties and responsibilities	15 minutes	
C.O. Wayne June	Correction Officer / To testify about his actions and observations on May 1, 2020	10 minutes	

x. For testimony to be taken from unavailable witnesses pursuant to Fed. R. Civ. P. 32(a)(4), a page and line designation by each party of witness deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.

For Plaintiff:

<b>Witness</b>	<b>Page/Line Designation(s)</b>	<b>Cross-Designation(s)/Objection(s)</b>
Curtis Howland	13:10-22	
Curtis Howland	15:11-16:19	
Curtis Howland	24:8-25:23	
Curtis Howland	26:18-30:9	
Curtis Howland	30:10-31:15	
Curtis Howland	31:16-32:24	
Curtis Howland	32:24-37:25	401: Relevance as to 37:7-25.
Curtis Howland	38:4-6	401: Relevance
Curtis Howland	38:13-41:8	401: Relevance
Curtis Howland	41:19-44:24	
Curtis Howland	44:3-45:7	
Curtis Howland	45:11-48:18	
Curtis Howland	48:19-49:6	
Curtis Howland	49:12-53:17	
Curtis Howland	54:21-64:5	
Curtis Howland	65:9-15, 23-25	
Curtis Howland	66:11-14	
Curtis Howland	67:2-68:5, 12-15	
Curtis Howland	68:23-69:1	401: Relevance
Curtis Howland	69:11-23	401: Relevance

For Defendants: None.

xi. A list by each party of exhibits to be offered in its case in chief, with a notation indicating the basis for admissibility of each exhibit with citation to Fed. R. Evid., as well as a notation indicating exhibits to which there is an objection and the basis therefor. The failure to include a notation and basis may be deemed a waiver of any objection.

Joint Exhibits:

EX.	Description	Bates Range
A	Plaintiff's Misbehavior Reports	REESE-DEF 000023 – 000025
B	Inmate Injury Report	REESE-DEF 000036
C	Use of Force Reports	REESE-DEF 000026 – 000032
D	Phone call from Plaintiff Claude Reese to Asia Reese, dated May 1, 2020	REESE-DEF 000398
E	Orange Regional Medical Center Chart	REESE-DEF 000214 – 000242
F	Photos of Plaintiff, taken on May 1, 2020	REESE-DEF 000042

For Plaintiff:

Ex. No.	Description	Bates No(s).	Basis	Objections
P01	Transcript of phone call from Plaintiff Claude Reese to Asia Reese	N/A	FRE 401	403: Duplicative and prejudicial; 801: Hearsay
P02	Phone call from Luis Torres to Asia Reese, dated May 1, 2020	DEF 399	•FRE 401 •FRE 803	403: Prejudicial; 602: Personal knowledge; 801: Hearsay
P02A	Transcript of phone call from Luis Torres to Asia Reese	N/A	•FRE 401 •FRE 803	403: Duplicative and prejudicial; 602: Personal knowledge; 801: Hearsay
P03	Phone call from Luis Torres to his father, dated May 1, 2020	DEF 400	•FRE 401 •FRE 803	403: Prejudicial; 602: Personal knowledge; 801: Hearsay
P03A	Transcript of phone call from Luis Torres to his father	N/A	•FRE 401 •FRE 803	403: Prejudicial; 602: Personal knowledge; 801: Hearsay



P05	Use of Force photos of Defendant Friedlander	DEF 43-45	•FRE 401 •FRE 803	
P06	Use of Force photo of Defendant Williamson	DEF 39	•FRE 401 •FRE 803	
P07	Photos of 118-2 dorm and draft area	DEF 386-397	•FRE 401 •FRE 803	401: Relevance
P08	Escort video taken from reception to van	DEF 359	•FRE 401 •FRE 803	401: Relevance
P09	Escort video taken inside van en-route to hospital	DEF 360	•FRE 401 •FRE 803	401: Relevance
P10	Escort video taken inside van on hospital grounds	DEF 361	•FRE 401 •FRE 803	401: Relevance
P11	Escort video of van arriving at hospital entrance	DEF 362	•FRE 401 •FRE 803	401: Relevance
P12	Escort video depicting Plaintiff already outside of van (3 seconds)	DEF 363	•FRE 401 •FRE 803	401: Relevance
P13	Unusual Incident Report	DEF 120-124	•FRE 401 •FRE 803	
P14	Logbook for 118-2	DEF 366-370	•FRE 401 •FRE 803	
P15	Logbook for 121-2	DEF 382-386	•FRE 401 •FRE 803	
P16	To/From Memorandum from Howland to Bodnar, dated May 1, 2020	DEF 34, 135	•FRE 401 •FRE 803	801: Hearsay
P17	To/From Memorandum from Howland to Bodnar, dated May 11, 2020	DEF 148	•FRE 401 •FRE 803	801: Hearsay
P18	Use of Force Report-Part B-Addendum, dated May 1, 2020	DEF 127, 210-211	•FRE 401 •FRE 803	
P19	Inmate pedigree sheet	DEF 037	•FRE 401 •FRE 803	401: Relevance; 801: Hearsay
P20	Employee injury Report—Williamson, dated May 1, 2020	DEF 143	•FRE 401 •FRE 803	
P21	Employee injury Report—Friedlander	DEF 41	•FRE 401 •FRE 803	
P22	Ambulatory Health Record	DEF 212-213; PLF 840-855	•FRE 401 •FRE 803	
P23	Request & Report of Consultation	DEF 207	•FRE 401 •FRE 803	

P24 <sup>2</sup>	UHS Wilson Memorial Hospital Records	DEF 467-1062	•FRE 401 •FRE 803	
P25	Portions of deposition transcript of Howland	N/A	•FRCP 32(a) •FRE 401 •FRE 803	Specific objections noted above.

For Defendants: None.

**xii. A statement of the relief sought, including damages claimed, itemizing each component or element of the damages sought with respect to each claim, and including the manner and method used to calculate the claimed damages.**

Plaintiff seeks against all Defendants compensatory damages for his pain and suffering and loss of enjoyment of life, punitive damages, and attorney's fees pursuant to 42 U.S.C. § 1988, as well as costs and disbursements of this lawsuit.

Defendants seek dismissal of all remaining causes of action, as well as costs and disbursements of defending the lawsuit.

**xiii. A statement as to whether the parties consent to a less than unanimous verdict.**

The parties do not consent to less than a unanimous verdict.

Dated: New York, New York  
July 22, 2024

**SIVIN, MILLER & ROCHE, LLP**  
Attorney for Plaintiff

/s/ Glenn Miller  
By: Glenn Miller  
20 Vesey Street, Suite 1400  
New York, NY 10007  
(212) 349-0300  
Email: gmiller@sivinandmiller.com

**SO ORDERED:**

**LETITIA JAMES**  
Attorney General of the State of New York  
Attorney for Defendants

/s/ S. Cynthia Luo  
By: S. Cynthia Luo  
Ian Ramage  
Assistant Attorneys General  
28 Liberty Street, 18<sup>th</sup> Floor  
New York, NY 10005  
(212) 416-8037/8659  
Email: cynthia.luo@ag.ny.gov  
ian.ramage@ag.ny.gov

\_\_\_\_\_  
Philip M. Halpern, U.S.D.J.

<sup>2</sup> Exhibit added in light of the Court's determination at the May 6, 2024 pre-trial conference that it intends to charge mitigation of damages. *See* ECF No. 62.